



(Billing Code 5001-06-P)

**DEPARTMENT OF DEFENSE**

**Defense Acquisition Regulations System**

**48 CFR Part 252**

**RIN 0750-AH79**

**Defense Federal Acquisition Regulation Supplement: New Free Trade Agreement—Panama (DFARS Case 2012-D044)**

**AGENCY:** Defense Acquisition Regulations System, Department of Defense (DoD).

**ACTION:** Final rule.

**SUMMARY:** DoD has adopted as final, with changes, an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement the United States—Panama Trade Promotion Agreement. This Trade Promotion Agreement is a free trade agreement that provides for mutually non-discriminatory treatment of eligible products and services from Panama.

**DATES:** *Effective* [Insert date of publication in the **FEDERAL REGISTER**].

**FOR FURTHER INFORMATION CONTACT:** Ms. Amy Williams, Telephone 571-372-6106.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

DoD published an interim rule in the Federal Register at 77 FR 68699 on November 16, 2012, to implement the United States—

Panama Trade Promotion Agreement. No respondents submitted public comments in response to the interim rule; however, a conforming change was made to the Duty-Free Entry clause, an amendment was made to the Photovoltaic Devices—Certificate clause to correct the electronic Code of Federal Regulations, and a correction was made to Alternate I of the Buy American Act—Free Trade Agreements—Balance of Payments Program Certificate. Therefore, DoD is converting the interim rule to a final rule with changes.

## **II. Executive Orders 12866 and 13563**

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

## **III. Regulatory Flexibility Act**

DoD certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., because the Department of Defense only applies the trade agreements to the non-defense items listed at DFARS 225.401-70, and acquisitions that are set aside or provide other forms of preference for small businesses are exempt. FAR 19.502-2 states that acquisitions that do not exceed \$150,000 (with some exceptions) are automatically reserved exclusively for small business concerns.

#### **IV. Paperwork Reduction Act**

This rule affects the certification and information collection requirements in the provisions at DFARS 252.225-7020 and 252.225-7035 and the clause at 252.225-7013, currently approved under OMB Control Number 0704-229, titled Defense Federal Acquisition Regulation Supplement part 225, Foreign Acquisition, and related clauses, in accordance with the Paperwork Reduction Act (44 U.S.C. chapter 35). The impact, however, is negligible, because it is just a question of under which category offered goods from Panama would be listed and inclusion of products of Panama in the definition of "eligible products" in acquisitions that are equal to or exceed \$202,000. The rule also affects DFARS 252.225-7018, which is a variant of the Buy American-trade agreements certifications already approved, which was issued as

an interim rule under DFARS Case 2011-D046 (76 FR 78858, December 20, 2011).

## **List of Subjects in 48 CFR Part 252**

Government procurement.

**Manuel Quinones,**

Editor, Defense Acquisition Regulations System.

Accordingly, the interim rule amending 48 CFR part 252, which was published at 77 FR 68699 on November 16, 2012, is adopted as a final rule with the following changes:

### **PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

1. The authority citation for 48 CFR part 252 continues to read as follows:

**Authority:** 41 U.S.C. 1303 and 48 CFR chapter 1.

2. Section 252.225-7013 is amended—

a. By removing the clause date "(JUN 2012)" and adding "(OCT 2013)" in its place;

b. By revising the paragraph (a) definition for "Eligible product"; and

c. By amending the paragraph (a) definition for ""Qualifying country" and "qualifying country end product"" by adding the term ",basic or alternate" at the end of the sentence.

The revision reads as follows:

**252.225-7013 Duty-Free Entry**

\* \* \* \* \*

(a) \* \* \*

Eligible product means—

- (i) Designated country end product as defined in the Trade Agreements clause of this contract;
- (ii) Free Trade Agreement country end product, other than a Bahrainian end product, a Moroccan end product, a Panamanian end product, or a Peruvian end product, as defined in the Buy American—Free Trade Agreements—Balance of Payments Program clause of this contract, basic or its Alternate II;
- (iii) Canadian end product as defined in Alternate I or Alternate III of the Buy American—Free Trade Agreements—Balance of Payments Program clause of this contract; or
- (iv) Free Trade Agreement country end product other than a Bahrainian end product, Korean end product, Moroccan end product, Panamanian end product, or Peruvian end product as defined in Alternate IV or Alternate V of the Buy American—Free Trade Agreements—Balance of Payments Program clause of this contract.

\* \* \* \* \*

**252.225-7018 [Amended]**

3. Section 252.225-7018 paragraph (c)(6) is amended by removing "\$203,000" and adding "\$202,000" in its place.
4. Section 252.225-7035, Alternate I is revised as follows:

**252.225-7035 Buy American—Free Trade Agreements—Balance of  
Payments Program Certificate.**

\* \* \* \* \*

ALTERNATE I (OCT 2013)

As prescribed in [225.1101](#)(9)(ii), substitute the phrase  
"Canadian end product" for the phrases "Bahrainian end product,"  
"Free Trade Agreement country," "Free Trade Agreement country  
end product," "Moroccan end product," "Panamanian end product,"  
and "Peruvian end products" in paragraph (a) of the basic  
provision; substitute the phrase "Canadian end products" for the  
phrase "Free Trade Agreement country end products other than  
Bahrainian end products, Moroccan end products, Panamanian end  
products, or Peruvian end products" in paragraphs (b)(2) and  
(c)(2)(ii) of the basic provision; and delete the phrase  
"Australian or" from paragraph (c)(2)(i) of the basic provision.

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